

Message Text

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INFO OCT-01 ARA-06 EUR-12 EA-06 NEA-10 ISO-00 SP-02 AID-05

EB-07 NSC-05 CIEP-01 TRSE-00 SS-15 STR-04 OMB-01

CEA-01 L-03 H-02 PA-01 PRS-01 USIA-06 CIAE-00 COME-00

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ACDA-05 DODE-00 PM-03 DLOS-03 OES-03 SAM-01 SAJ-01

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DRAFTED BY IO/CMD:RAPOOLE:CB

APPROVED BY IO:RDMOREY

L:SMSCHWEBEL

EB/OT/GCP:DJDUNFORD

EUR/RPE:GFALK

ARA/MEX:JTMCCARTHY

EB/IDF:PHBOEKER

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E.O. 11652: GDS

TAGS: UN, EGEN

SUBJECT: CONSULTATIONS ON DEALING WITH REFERENCES TO CERDS

1. SUMMARY AND INTRODUCTION. WE ARE INCREASINGLY CONCERNED OVER THE RECURRING PROBLEM OF DEALING WITH REFERENCES TO THE CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES (CERDS), AS WELL AS THE DECLARATION AND PROGRAM OF ACTION ON THE ESTABLISHMENT OF A NEW INTERNATIONAL ECONOMIC ORDER (NIEO), IN RESOLUTIONS AND DECLARATIONS INTRODUCED IN A WIDE VARIETY OF UN FORUMS. CLEARLY THE THIRD WORLD COUNTRIES ARE ATTEMPTING, THROUGH CONSTANT REITERATION AND IN DISREGARD OF WESTERN DISSENTS, TO ESTABLISH THESE DOCUMENTS AS HALLOWED DICTUMS TO BE FOLLOWED IN ACHIEVING A NEW WORLD ECONOMIC ORDER. WE ARE CONCERNED OVER THE TIME-CONSUMING AND ABRASIVE DIGRESSIONS THAT ARE FORCED ON US IN PROTECTING OUR POSITIONS WITH RESPECT TO THOSE DOCUMENTS AND OVER THE LACK OF UNIFORMITY AMONG OUR WESTERN ASSOCIATES IN DEALING WITH THE PROBLEM. WE THEREFORE WISH TO CONSULT WITH KEY WESTERN COUNTRIES IN HOPES OF ARRIVING AT A UNIFIED APPROACH TO THE PROBLEM WHICH WOULD (1) MAINTAIN OUR POSITIONS ON SUBSTANTIVE PROVISIONS, AND (2) SIMPLIFY THE PROCESS OF DEALING WITH TANGENTIAL REFERENCES, INCLUDING AN AGREED PATTERN WITH RESPECT TO VOTING AND

EXPLANATIONS OF VOTE AND, HOPEFULLY, AGREEMENT ON A BLANKET STATEMENT THAT COULD HENCEFORTH BE REFERRED TO.
END SUMMARY.

2. WE SEE THE PROBLEM AT TWO LEVELS: (1) IN RESTATEMENTS OF THOSE SUBSTANTIVE PROVISIONS OF THE CERDS AND THE LIMITED OFFICIAL USE
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NIEO RESOLUTIONS WITH WHICH WE DISAGREE (WHETHER OR NOT THOSE DOCUMENTS ARE CITED AS THE AUTHORITY); AND (2) IN GENERAL REFERENCES TO THOSE DOCUMENTS THAT IN VARYING DEGREES TEND TO ENSHRINE THEM AS BASIC GUIDELINES, PRINCIPLES AND/OR OBLIGATIONS FOR ONWARD ACTION, BUT WHICH ARE MORE OFTEN THAN NOT INTRODUCED IN FORUMS AND CONTEXTS WHERE THEY ARE BASICALLY IRRELEVANT TO THE TOPIC BEFORE THE HOUSE.

3. IT WILL BE RECALLED THAT OUR PRINCIPAL SUBSTANTIVE PROBLEMS WITH THE CERDS -- SHARED BY A NUMBER OF WESTERN COUNTRIES -- PERTAIN TO: (A) ITS TREATMENT OF FOREIGN IN-

VESTMENT, INCLUDING EXPROPRIATION/COMPENSATION WITHOUT DUE REGARD TO INTERNATIONAL OBLIGATIONS; (B) ITS SUPPORT FOR PRIMARY PRODUCER ORGANIZATIONS WITHOUT REGARD TO CONSUMER INTERESTS (I.E. CARTELS); (C) ITS CLAIM FOR RESTITUTION FOR ALLEGED LOSSES UNDER COLONIALISM, NEO-COLONIALISM, OCCUPATION, ETC.; (D) ITS ENDORSEMENT OF THE CONCEPT OF ADJUSTMENTS IN THE PRICES OF DEVELOPING COUNTRY EXPORTS (I.E. INDEXATION); (E) AS WELL AS A NUMBER OF OTHER PROBLEMS OF LESSER MAGNITUDE, INCLUDING PROVISIONS RELATING TO COLLECTIVE ECONOMIC SECURITY, DISARMAMENT, PREFERENTIAL TREATMENT FOR LDCS IN NON-TRADE FIELDS, MOST-FAVORED NATION TREATMENT FOR ALL COUNTRIES, SEA-BEDS. ESSENTIALLY THE SAME SUBSTANTIVE ISSUES AROSE IN THE NIEO RESOLUTIONS.

4. IN THE CASE OF THE SUBSTANTIVE ISSUES, WE MAINTAIN THE SAME POSITIONS THAT WE TOOK ON THE CORRESPONDING PROVISIONS OF THE CERDS AND THE NIEO RESOLUTIONS AT THE 29TH UNGA AND THE 6TH SPECIAL UNGA, RESPECTIVELY, I.E. IN THE VOTING ON THE FORMER AND IN RESERVATIONS ON THE LATTER, WHICH WERE ADOPTED WITHOUT VOTE.

5. IN THE CASE OF GENERAL REFERENCES TO THESE DOCUMENTS, WE HAVE HAD TO DEAL WITH THE PROBLEM IN A VARIETY OF WAYS DEPENDING ON THE FORMULATION AND THE CONTEXT. IN GENERAL WE HAVE TRIED TO AVOID (OR HAVE HAD TO OPPOSE) REFERENCES PHRASED IN SUCH A WAY THAT A POSITIVE VOTE COULD BE INTERPRETED AS A CHANGE IN BASIC U.S. POSITIONS. TO THIS END WE HAVE OFTEN BEEN INVOLVED IN TIME-CONSUMING INFORMAL NEGOTIATIONS WITH THE PROPONENTS OF SUCH REFERENCES AND/OR LIMITED OFFICIAL USE
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FORMAL EFFORTS TO AMEND THEM FROM THE FLOOR; IN CALLING FOR SEPARATE VOTES ON OFFENDING PASSAGES AND FOR VOTES ON RESOLUTIONS AS A WHOLE WHICH MIGHT OTHERWISE HAVE BEEN

ADOPTED WITHOUT VOTE; AND IN EXPLANATIONS OF OUR VOTES. THE PROCESS IS OFTEN PAINFUL, ABRASIVE AND DIVERSIONARY FROM THE MAIN PURPOSE OF THE MEETING.

6. IT IS THE THIRD WORLD (GROUP OF 77) COUNTRIES THEMSELVES THAT INVITE OUR REACTION BY THEIR CONSTANT EFFORTS TO WEAR US DOWN. (THE G-77 NOW NUMBER 100 UN MEMBERS PLUS A FEW OTHERS.) WE AND OUR FRIENDS SHOULD NOT ALLOW THEM TO SUCCEED IN THEIR OBVIOUSLY CONCERTED ENDEAVOR TO BUILD A CUMULATIVE RECORD OF PROGRESSIVE CONCESSIONS WHICH IN SUM COULD BE ALLEGED TO REPRESENT ACQUIESCENCE IN THE CERDS AND/OR THE NIEO RESOLUTIONS AND IN THEIR IMPLEMENTATION. ON THE OTHER HAND, THE EFFORT WE EXPEND IN PRESERVING OUR POSITION MAY SEEM DISPROPORTIONATE WHEN THE REFERENCES ARE PERIPHERAL. MOREOVER, WE ARE FACED WITH A VOTING DILEMMA WHEN UNACCEPTABLE AND IRRELEVANT REFERENCES

ARE GRAFTED ONTO RESOLUTIONS WHOSE MAIN SUBSTANCE WE ACTIVELY SUPPORT.

7. WHAT CONCERNS US PARTICULARLY IS THE LACK OF UNIFORMITY ON THESE ISSUES AMONG THOSE COUNTRIES WHO JOINED WITH US IN OPPOSING CERTAIN PROVISIONS OF THE CERDS AND WHO VOTED WITH US AGAINST THE CERDS AS A WHOLE OR AT LEAST ABSTAINED, AND WHO ALSO JOINED IN LODGING NUMEROUS RESERVATIONS ON THE NIEO RESOLUTIONS. MOST SEEM MORE RELAXED THAN WE IN DEALING WITH REFERENCES TO THESE DOCUMENTS AND EVEN WITH SUBSTANCE, EITHER OUT OF RELUCTANCE TO OFFEND THE GROUP OF 77 OR, SOMEWHAT MORE CYNICALLY, OUT OF AN ATTITUDE THAT THESE REFERENCES MAKE LITTLE DIFFERENCE ANYWAY. (AS A RESULT WE HAVE OFTEN FOUND OURSELVES ALONE OR WITH ONLY ONE OR TWO OTHERS E.G. UK AND FRG.) THIS LACK OF UNIFORMITY -- AND SEEMING DISARRAY -- IS TO NO ONE'S ADVANTAGE EXCEPT THE G-77 PROPONENTS OF THE CERDS AND THE NIEO RESOLUTIONS, WHO SUCCEED IN PRESENTING A UNITED FRONT DESPITE REAL DIFFERENCES WITHIN THEIR RANKS.

8. ACTION ADDRESSEES ARE REQUESTED TO COMMENCE AN EX-LIMITED OFFICIAL USE
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CHANGE OF VIEWS WITH HOST GOVERNMENTS ON HOW BEST TO RESOLVE THIS SITUATION, WITH A VIEW TO FURTHER DISCUSSION AND IF POSSIBLE GENERAL AGREEMENT IN SOME SUITABLE CONSULTATIVE FRAMEWORK SUCH AS THE OECD. (ACTION ADDRESSEES FOR THIS INITIAL APPROACH HAVE BEEN SELECTED ON THE BASIS OF THOSE OECD COUNTRIES WHO EITHER VOTED AGAINST OR ABSTAINED ON THE CERDS AS A WHOLE AT THE 29TH UNGA, ISRAEL BEING THE ONLY OTHER ABSTENTION.) IN YOUR DISCUSSIONS YOU MAY DRAW AS APPROPRIATE ON THE ABOVE PRESENTATION OF U.S. CONCERNS. YOU CAN EXPLAIN THAT WE DO NOT HAVE A PAT SOLUTION TO PROPOSE BUT THAT OUR PRESENT THINKING RUNS ALONG THESE GENERAL LINES (WHICH POSTS MAY WISH TO USE AS THE BASIS FOR AN AIDE-MEMOIRE):

- (A) THE OBJECTIVE IS TO PROTECT THE SUBSTANCE OF THE WESTERN POSITIONS ON THE CERDS AND THE NIEO RESOLUTIONS AGAINST EROSION IN THE FACE OF THE PERSISTENT EFFORTS OF THE G-77, WHILE AT THE SAME TIME MINIMIZING REPEATED, TIME-CONSUMING AND CONFRONTATIONAL DIGRESSIONS ON THIS SCORE IN FORUMS AND CONTEXTS WHERE THE ISSUE IS PERIPHERAL.

- (B) A UNIFIED APPROACH, TO THE EXTENT POSSIBLE, IS ESSENTIAL IN THE FACE OF UNITED PRESSURE FROM THE G-77. IN TAKING A UNITED POSITION, HOWEVER, WE DO NOT WANT TO CONVEY AN IMPRESSION OF CONFRONTATION CONNOTING INSENSITIVITY TO THIRD WORLD ASPIRATIONS, BUT REFORMS IN THE ECONOMIC ORDER MUST TAKE ACCOUNT OF DC AS WELL AS LDC INTERESTS.

- (C) THE G-77 SHOULD BE MADE TO UNDERSTAND THAT IF THEY WISH TO AVOID REPEATED DISSENT THEY MUST ON THEIR SIDE AVOID THE ENDLESS AND PROFITLESS REPETITION OF UNACCEPTABLE FORMULATIONS.

- (D) AT THE FIRST LEVEL OF THE PROBLEM, I.E., ON SUBSTANTIVE ISSUES, WE SHOULD MAINTAIN OUR WELL-CONSIDERED POSITIONS AND URGE OUR FRIENDS TO DO LIKEWISE. WHERE WE ARE UNABLE TO NEGOTIATE SATISFACTORY FORMULATIONS WE SHOULD CONTINUE TO ASK FOR SEPARATE VOTES ON THE OFFENDING PASSAGES AND TO VOTE IN A MANNER COMPATIBLE WITH OUR POSITIONS ON THE CERDS AND THE NIEO RESOLUTIONS.

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- (ON THE CERDS WE ARE ON RECORD AS BEING WILLING TO REOPEN NEGOTIATIONS WITH A VIEW TO ARRIVING AT A CHARTER AGREEABLE TO ALL, BUT UNTIL THERE ARE SOME SIGNS OF GENUINE G-77 INTEREST IN MODIFYING AND NEGOTIATING THEIR POSITIONS ON CONTROVERSIAL PROVISIONS, WE SEE NO POINT IN TAKING ANY INITIATIVE AT THIS TIME. IN ANY EVENT, TO THE EXTENT THAT IRRELEVANT FORUMS ARE THE FOCUS OF PROMOTION OF THE CERDS, THEY ARE NO PLACE TO NEGOTIATE OR MODIFY WESTERN POSITIONS ON THESE SUBSTANTIVE MATTERS.)

- (E) AT THE SECOND LEVEL OF THE PROBLEM, I.E., IN DEALING WITH GENERAL REFERENCES TO THE CERDS AND THE NIEO RESOLUTIONS IN OTHER CONTEXTS, WE ARE PREPARED TO MODIFY OUR CURRENT PRACTICE IF WE CAN REACH AGREEMENT WITH OUR FRIENDS ON CONCERTING OUR POSITIONS. FOR EXAMPLE, WE AND OUR FRIENDS MIGHT CONFINE OUR EFFORTS AT IMPROVED LANGUAGE TO AN INFORMAL APPROACH TO THE PROPONENTS BUT WITHOUT EMBARKING ON LENGTHY NEGOTIATIONS; THEREAFTER WE WOULD MAKE NO FURTHER EFFORT TO AMEND THE LANGUAGE IN THE SESSIONS THEMSELVES; WE WOULD NOT EVEN ASK FOR A SEPARATE VOTE ON THE OFFENDING PASSAGE, BUT

MERELY RECORD OUR CONCERTED POSITIONS IN THE VOTE ON THE RESOLUTION AS A WHOLE AND/OR IN A BRIEF EXPLANATION OF VOTE, IN ACCORDANCE WITH AN AGREED FORMULA.

- TENTATIVELY WE SUGGEST THE FOLLOWING AS A POSSIBLE RULE OF THUMB ON VOTING, REPRESENTING A MODIFICATION OF PRESENT U.S. PRACTICE: (1) WE WOULD CONTINUE TO ACCEPT INNOCUOUS REFERENCES SUCH AS "BEARING IN MIND," "IN THE LIGHT OF" OR TAKING INTO ACCOUNT" THE CERDS AND/OR THE NIEO RESOLUTIONS, AS WELL AS LESS NEUTRAL REFERENCES WHEN THESE ARE EXPRESSED AS THE OPINION OF "MOST COUNTRIES" OR POSSIBLY WHEN APPROPRIATELY FOOTNOTED. (2) OTHER REFERENCES THAT ARE MAR;INALLY QUESTIONABLE, SUCH AS THOSE CALLING FOR ACTION IN AN ACCEPTABLE FIELD

"PURSUANT TO" THE CERDS AND/OR THE NIEO RESOLUTIONS,
THOSE REITERATING THE STATED PURPOSES OF THESE DOCUMENTS
WITHOUT EDITORIALIZING, OR THOSE REFERRING TO THEM AS
IMPORTANT DOCUMENTS MAY ALSO BE ACQUIESCED IN WHEN VOTING
ON A RESOLUTION AS WHOLE THAT IS OTHERWISE QUITE ACCEPTABLE
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BUT THESE SHOULD BE ACCOMPANIED BY A SIMPLE EXPLANATION
OF VOTE TO THE EFFECT THAT THIS IN NO WAY CONNOTES A
CHANGE IN POSITION ON THE CERDS OR THE NIEO RESOLUTIONS.
(3) WE WOULD CONSIDER CLEARLY UNACCEPTABLE THOSE
REFERENCES WHICH ASCRIBE TO THESE DOCUMENTS A STATURE WE
CANNOT RECOGNIZE (E.G. AS BEING OF "FUNDAMENTAL IMPORTANCE
IN ACHIEVING A NEW WORLD ECONOMIC ORDER" OR AS REPRESENTING
A STEP IN THE CODIFICATION OF INTERNATIONAL LAW), AND
THOSE WHICH ENDORSE THEM AS A WHOLE OR CALL FOR THEIR
UNQUALIFIED IMPLEMENTATION; WHERE SUCH REFERENCES ARE
INCIDENTAL, WE WOULD STILL VOTE "YES" ON A RESOLUTION
WHOSE MAIN CONTENT WE ACTIVELY SUPPORT, BUT WOULD ABSTAIN
WHEN THE MAIN CONTENT IS OF LITTLE INTEREST TO US -- IN
BOTH CASES EXPLAINING OUR DISAGREEMENT WITH THE REFERENCES
AS WELL AS THE FACT THAT OUR VOTE IN NO WAY CONNOTES A
CHANGE IN POSITION ON THE CERDS OR THE NIEO RESOLUTIONS.
(4) WHERE SUCH UNACCEPTABLE REFERENCES ARE FUNDAMENTAL TO
THE RESOLUTIONS IN QUESTION, WE WOULD VOTE "NO" ON THE
RESOLUTION AS A WHOLE, ALSO ACCOMPANIED BY A BRIEF EXPLANA-
TION.

- (F) A VARIANT OF (E) ABOVE MIGHT BE TO MAINTAIN THE
OPTION OF REQUESTING A SEPARATE VOTE ON AN UNACCEPTABLE
REFERENCE AND TO VOTE "NO" ON IT, WHICH WOULD THEN CONDUCE
TO VOTING ON THE RESOLUTION AS A WHOLE ON ITS MERITS, WITH
DUE EXPLANATION. THE MAIN DRAWBACK OF SUCH AN OPTION IS
THAT WE WOULD AGAIN BE SPINNING OUT THE PROCESS OF
REGISTERING OUR DISSENT.

- (G) (IN CASE IT SHOULD BE RAISED, WE ARE NOT TAKEN
WITH A DEVICE THAT SOME WESTERN COUNTRIES HAVE AT TIMES
TAKEN REFUGE IN, I.E. IN ADDING "AS ADOPTED AT THE 29TH
(OR 6TH SPECIAL) UNGA" AFTER A REFERENCE ENDORSING OR
CALLING FOR IMPLEMENTATION OF THE CERDS OR THE NIEO
RESOLUTIONS. THIS PURPORTS TO MEAN "AS ADOPTED" WITH
DISSENTING VOTES OR RESERVATIONS, WHICH IN TURN IMPLIES
THAT EACH COUNTRY ENDORSES OR IMPLEMENTS IN ACCORDANCE
WITH ITS OWN RECORDED POSITION. WE DO NOT THINK MUCH OF
THIS FORMULA SINCE (1) IT IS "GIMMICKY"; (2) IT IN FACT
ADDS NOTHING TO THE RECORDED DISSENTING VOTES AND RESERVA-
TIONS, WHILE ITS ABSENCE IN SOME CASES MIGHT THEN TAKE ON
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AN UNWARRANTED CONNOTATION; AND (3) WE COULD HARDLY AGREE TO LANGUAGE IMPLYING THAT OTHER COUNTRIES IN ACCORDANCE WITH THEIR OWN POSITIONS MAY IMPLEMENT PROVISIONS SUCH AS THOSE RELATING TO EXPROPRIATION AND PRIMARY PRODUCERS CARTELS.)

- (H) IN ALL CASES IT WOULD BE HIGHLY DESIRABLE IF THE EXPLANATIONS OF VOTE COULD BE MADE BY A SINGLE REPRESENTATIVE OF THE COUNTRIES CONCERNING THEIR POSITIONS. ALL OF THIS WOULD, OF COURSE, NECESSITATE GENERAL AGREEMENT ON HOW TO PROCEED IN THIS TYPE OF CASE BUT ALSO AGREEMENT THAT OUR RESPECTIVE DELEGATIONS WILL CONSULT CLOSELY DURING THE COURSE OF EACH CONFERENCE OR MEETING WHERE THESE ISSUES ARISE.

- (I) WE ALSO WISH TO SUGGEST SOME BLANKET FORMULA FOR MAKING IT KNOWN THAT, NO MATTER HOW OFTEN THESE SITUATIONS ARISE, NO TANGENTIAL REFERENCES, WHETHER OR NOT ACQUIESCED IN, CAN MODIFY BASIC POSITIONS RECORDED IN VOTES ON THE CERDS AND IN RESERVATIONS ON THE NIEO RESOLUTIONS. THIS COULD BE ACCOMPLISHED BY A JOINT DOCUMENT OFFICIALLY CIRCULATED OR BY A JOINT STATEMENT FOR THE RECORD IN AN APPROPRIATE FORUM. THIS WOULD HAVE THE ADVANTAGE OF BEING DIVORCED FROM A SPECIFIC CASE AND MIGHT THEREFORE BE ACCEPTABLE TO A WIDER GROUP OF COUNTRIES WHO REGISTERED VARYING DEGREES OF DISSENT FROM THE CERDS AND THE NIEO RESOLUTIONS. IT WOULD HAVE THE DISTINCT ADVANTAGE OF SIMPLIFYING THE QUESTION OF REGISTERING OBJECTIONS IN FUTURE SPECIFIC CASES, AS IT COULD BE REFERRED TO EITHER INDIVIDUALLY OR BY THE GROUP SPOKESMAN SUGGESTED IN SUB-PARAGRAPH (H) ABOVE.

IF YOU USE THE ABOVE LETTERED PARAGRAPHS AS THE BASIS FOR AN AIDE-MEMOIRE, YOU MAY WISH TO DRAW ON PARAGRAPHS 1 AND 2 FOR AN INTRODUCTION. IT IS ALSO SUGGESTED THAT YOU OMIT THE PARENTHETICAL SECOND PARAGRAPH OF (D) AND PARENTHETICAL PARAGRAPH (G), RESERVING THESE FOR ORAL

USE IF NEEDED.

9. WE WILL BE MOST INTERESTED IN HEARING THE REACTIONS OF LIMITED OFFICIAL USE
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Message Attributes

Automatic Decaptioning: X
Capture Date: 26 AUG 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LESS DEVELOPED COUNTRIES, NONALIGNED NATIONS, ECONOMIC PROGRAMS, CERDS, COMMITTEE MEETINGS, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 07 JUN 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: CunninFX
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE133602
Document Source: ADS
Document Unique ID: 00
Drafter: IO/CMD:RAPOOLE:CB
Enclosure: n/a
Executive Order: 11652 GDS
Errors: n/a
Film Number: D750200-0083
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t197506100/baaaambf.tel
Line Count: 376
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Office: ORIGIN IO
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 7
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: CunninFX
Review Comment: n/a
Review Content Flags:
Review Date: 09 APR 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <09 APR 2003 by ElyME>; APPROVED <22 SEP 2003 by CunninFX>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: n/a
TAGS: EGEN, UN
To: BONN
BRUSSELS
COPENHAGEN
DUBLIN
LONDON

VIENNA
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MADRID
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TOKYO INFO CANBERRA
MEXICO
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Type: TE

Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006